

ADEPT
Legal Commentaries

April 2003

The Activity of Parliament during March 31 - April 4, 2003

7 April 2003

Although the Parliament decisions on nuclear wastes initially spurred a huge scandal, they did not lead to huge protest rallies of the environmental NGOs. This weak resolution of the Transdnistrian conflict and official visit of the OSCE Chair in Office took the center stage again.

I. Resolution on adopting the Protocol on the mechanism of working out and adopting the Constitution of the Federative State

For the first time in the recent years, during April 4 session the Parliament heard a report on the negotiation process developments, presented by Minister of Reintegration. The latter was criticized for the lack of progress in the negotiations. In addition, for the first time the Parliament examined and adopted an act signed by the two parties in negotiations on the mechanism of working out the draft of the Constitution of the Republic of Moldova. Noteworthy, the Protocol approved by the Parliament stipulates the procedure of forming the Commission, which is to develop the Constitution, deadlines for elaboration and public debates, as well as adoption procedure via referendum.

However, a series of questions arise related to the established procedures. Those few articles of the protocol are not covering the entire range of problems, which would surface later on. One thing is for sure, as outlined the process of Constitution elaboration and adoption does not comply with the current legal framework. Not only Transdnistrian side points to the impossibility of settling the conflict within the framework of the current Constitution of the Republic of Moldova, but also Chisinau authorities seem to agree with it lately. Furthermore, guarantor countries and OSCE share the same opinion. All this might affect our country sovereignty.

Opposition tried to adjourn the adoption of the protocol on reintegration of the country within a single federal state and propose its own solution. Nevertheless, Parliament passed the Protocol and entrusted Judicial Commission to select appropriate candidates into the Commission, which is to draft the Constitution.

II. Law on the Ratification of the Convention between Republic of Moldova and Albania on eliminating double taxation and preventing fiscal evasion on income and capital tax

ADEPT comment: The Convention is intended to eliminate double taxation, prevent fiscal evasion, and abolish any type of fiscal discrimination. The Convention is based on the following principles: non-discrimination of the taxpayers; stable taxes; simplicity of tax payment; and fostering entrepreneurship. The Convention also provides for regular exchange of information between the countries.

III. Law on Ratification of the Protocol to the Convention on legal assistance in civil, family and penal matters among CIS states

ADEPT comment: The Protocol outlines cooperation mechanisms via relevant bodies: Ministry of Justice, Prosecution and Ministry of Foreign Affairs. Assistance shall be provided for: drawing and sending documents; conducting research and investigation, collection of evidence; conducting expertise, interrogation; extradition of persons and enforcing sentences.

IV. Resolution on enforcement of Convention on prohibition of developing, producing, storing and using chemical weapons

ADEPT comment: Ministry of Economy was designated to oversee the enforcement of Convention procedures. Also the Ministry shall represent Republic of Moldova in relations with international bodies working to prohibit chemical weapons.

V. Law on the modification and completion of the Code on Administrative Offence

ADEPT comment: The new provisions outline sanctions for violating the rules of using the cash-registers, namely:

- using unregistered cash-registers;
 - breaking on purpose cash-registers' fiscal memory;
 - making transactions without cash-registers;
 - failure to issue cash voucher to the customers, etc.
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VI. Law on completing the Law on Police

ADEPT comment: Under the law, police is entitled to make use of metrology devices to determine the speed (the so-called "police radar"). So far, the devices have been used without any legal grounds and any person sanctioned based on the data of the radar was entitled to request the cancellation of the sanction, although his/her offence was evident.

Parliament Activity Review April 7-11, 2003

April 15, 2003

One may realize that the electoral campaign has started not only because of the frequent declarations made by politicians, but also because of the increased attention to the electorate. Thus, the number of meetings with the voters has increased, as has the number of charitable events.

The Parliament itself is likely to be affected by this tendency. Thus, lately the Parliament has focussed less on examining legislation but rather focussed on public debates.

I. Law on completing the law on state budget and exemption wine distillates from customs fees.

ADEPT comment: The law entitles Customs Department to extend by 4 months the deadline for the payment of excises and other related fees on wine distillates imported for the cognac production. Modifications have been operated to the law due to the significant increase in the demand of Moldovan cognac on the foreign market, and the shortage of distillates for its production. The said modifications would allow for the production of 500,000 decaliters of cognac in 2003 and 600,000 in 2004.

II. Law on exempting "Industrialporiect" Institute from VAT and penalties.

ADEPT comment: In 1995-2001 the Institute was forced via a Government resolution to cede one of the building in its property to the Information Technology Department. However at that time Fiscal Code provided for binding calculation of VAT tax on any transferring. Later controls showed that the Institute failed to comply, consequently considerable penalties were applied.

Thus not only the Institution had to transfer free of charge one of its buildings it had also had to pay for it. Later on, the said provision was excluded from the Fiscal Code, nevertheless it was not possible to apply it retroactively. That is why it was necessary to adopt another law that would exempt the institute from the penalties incurred.

III. Law on the recording information system of crimes and criminals, passed in the first reading.

ADEPT comment: The law regulates the formation and operation of the recording information system of the crimes and criminals. In addition the system will also record court hearings and investigations on the registered cases. The law provides for:

- general notions;
- principles of system creation and operation;
- organizing a unified recording system;
- rights and responsibilities of or relevant persons.

According to some preliminary assessment, the enforcement of the law would not require any additional funds, as it is already in use in the Ministry of Home Affairs. The only thing necessary is to legalize it in compliance with Constitutional and legal provisions on human rights.

IV. Law on modification of the Law on Licensing, adopted in the first reading.

ADEPT comment: Under the law, a license should be received for industrial fishing in Dniester and Prut rives, as well as for transportation services.

Parliament Activity Review 14-18 April 2003

April 23, 2003

I. Law on Amending the Law on Civil State Documents.

ADEPT comment: The law abolished the provisions whereby civil state documents had to be written obligatorily in the Moldovan language, not "in the Russian language". Earlier, this provision was ruled unconstitutional and Parliament had to abide by the decision of the Constitutional Court. Deputies decided not simply to abolish the unconstitutional provision, but also to substitute it with another one, whereby the documents of civil state are to be written in the state language *"and in another language, according to the Law on Languages Spoken in Moldova"*.

It is to be remembered that **Law no. 3645 of 1 September 1989**, which is mentioned, provides that the Russian language, as the language of communication in the USSR, is to be used along with the Moldovan language in the republic as the language of inter-ethnic communication, which fact ensured a real national-Russian and Russian-national bi-lingualism.

Also, the law provides expressly that the working language of state secretariats and notaries and of the executive committees of district, village, town and people's deputies Soviets, as well as of the bodies of registration of civil acts will be either the state language or the Russian language.

The executive committees of local people's deputies' Soviets issue documents in the state language, and, when requested by the citizens, in the Russian language. The notaries and the bodies of civil act registration issue documents in *"either the state or Russian language"*.

Following from this is the observation that Parliament has not fully respected the decision of the Constitutional Court, for it replaced the unconstitutional provisions through the reference to a norm that is also unconstitutional. This is clear if one looks at Article VII of Title VII of the Constitution "Final and Transitional Provisions", which stipulates: "The Law of 1 September 1989 on Languages Spoken in Moldova will continue to be effective to the extent that it does not run counter to the current Constitution". Since the civil state documents are official legal acts, they fall directly under Article 13 of the Constitution and the provisions anterior to the current Constitution do not have legal power.

It is to be noted that Parliament made a reference in the Law on Notaries to the Law of 1 September 1989 and ruled that notaries should issue documents in the Moldovan and Russian languages.

It is possible that soon these norms too will be contested in the Constitutional Court, which will decide if they are constitutional or not.

Another conclusion that comes out of this is that the parliamentary majority has been making systematic changes intended to enhance the standing of the Russian language (in the laws mentioned above, the Law on the Protection of Consumers, the Law on Medicines, etc.)

Thus, although the Parliament has not succeeded in amending the Constitution and grant the Russian language the status of state language officially, this is being done in a rather insistent manner through a wealth of indirect amendments, despite the fact that the PACE Resolutions recommended abstaining from taking any decisions on the status of languages. It seems, though, that in the ongoing electoral campaign everyone has forgotten about this. The CE officials do not insist on these issues any more and have given green light to Moldova taking over the Chairmanship of the CE Committee of Ministers.

II. The Law on Amending the Code of Offences.

ADEPT comment: In this law Parliament excluded from the Code on Offences the provisions about sanctions for selling weapons and munitions in shops other than the "state" ones. We need to remind that earlier, according to the proposal of deputy Iurii Cicinov, Parliament abolished the monopoly of the Ministry of Internal Affairs on selling weapons and munitions, and extended this right to the Association of Hunters and Fishermen of Moldova, whose Chairman the deputy Iurii Cicinov used to be before elected to Parliament.

III. Law on amending the Law on Customs Tariff.

ADEPT comment: Earlier Parliament changed the taxes established for beer and raw tobacco imports and established various taxes of higher or lower values, some being reduced up to zero value. The Moldovan President did not promulgate that law, and recommended the Parliament to reconsider its position on beer and raw tobacco imports in a manner to stimulate local producers and to create the economic conditions necessary to fight alcohol smuggling. Deputies accepted most the President's proposals, except for those on beer imports, arguing that by establishing higher taxes on imports, the consumption of imported beer will drop and the production and consumption of locally produced beer will rise.

IV. Decision on appointing the members of the Commission for the drafting of the new Constitution of the Republic of Moldova.

ADEPT comment: Two weeks ago, Parliament heard the report of the Minister of Reintegration and adopted the Protocol on the Aspects of the Mechanism of Drafting the New Constitution. The Juridical Commission was tasked to select the members of the Constitutional Commission. Later, the Transdnistrian Parliament adopted a similar decision.

Three lawyers were appointed to the Commission at the 17 April meeting: N.Chiseev, former judge at the Constitutional Court, V.Mocreac, Professor of Constitutional Court, and I.Creanga, Head of the Legal Division of Parliament.

The appointment to the Commission of professional lawyers was criticised by a number of deputies who said that an important task as this one should not be entrusted only to lawyers, as problems of other nature might need to be tackled in the process. Despite these protests, the parliamentary majority voted for this decision arguing that the text of the new Constitution will be examined by Parliament and later be subjected to a national referendum and so the deputies will have plenty of opportunity to discuss it.

Some analysts said that the fact that no political figures have been included in the Commission is intended to ensure the constructive activity of the Commission and to avoid taking prematurely a political stand on something that will later require wider co-ordination and consultation.

V. The new Code of Civil Procedure.

ADEPT comment: Parliament has started the examination of the first part of the new Code of Civil Procedure, which needs to be adopted to ensure the entry into effect of the new Civil Code.

The new code has been adapted to the changes made during the past years to laws regulating the economic, civil and financial affairs, as well as the ones on the judicial system etc. The code includes now new provisions on probation, court summons, the jurisdictional competence, the special procedure etc. Also, new provisions have been added with regard to recognising the capacity of exercise, forced medical treatment and the reconstruction of the ruined judicial procedure etc.

The adoption of the new Code of Civil Procedure will help finalise the reform of the civil and criminal legislation. Soon Parliament will examine the new Code on Offences, which is the last of the series of new codes adopted in Moldova. To date, Parliament has adopted the following codes: family, civil, criminal, labour, and criminal procedure.

The Activity of Parliament during 21-25 April 2003

29 April 2003

During this period of time, the Parliament examined and adopted a series of highly important legislative acts, both related to the economic activity and to the juridical reform. Most debates were provoked by the draft laws on reforming the judicial bodies through the suppression of tribunals. Opposition representatives insisted that by suppressing tribunals the current government seeks to get rid of certain "uncomfortable" judges and are thus prejudicing citizens' rights of access to justice. Those who supported the drafts argued for changing these laws by saying that these changes will ensure full access to justice and will make justice more efficient by reducing the time between filing a complaint and getting the final court ruling. In authors' opinion, the proposed laws introduce enough guarantees for the judges now serving in the bodies liable for suppression to preserve their positions, and hence the opponents' accusations are not founded.

I. The New Code of Civil Procedure

ADEPT comment: The Parliament adopted in the second reading several chapters of the new Code of Civil Procedure of the Republic of Moldova, including provisions on the procedure of judicial debates, the adoption and contents of the decisions of judicial bodies, the suspension and termination of civil trials, the drafting of trial documents (minutes, conclusions etc.).

The Parliament decided to approve a number of changes whereby the provisions on the procedure of examining causes in the absence of the plaintiff have been excluded from the new Civil Code.

The new Code is to be adopted and enforced by mid-June when the Constitutional term for the judicial reform in accordance with the new structure of judicial bodies expires.

II. Law on the Evaluation of Appropriateness of Products

ADEPT comment: The law establishes the regulating framework necessary to evaluate the appropriateness of products, equipment, processes, technologies, production and quality systems, services etc. in order to ensure national security, prevent fraud, ensure the respect of rights, protect the life, health and wealth of consumers. The law is applied on all products in the market and the ones used in the Republic of Moldova. The law makes a number of exceptions, and refers to strategic goods and products from specially regulated fields.

Article 2 of the law defines the specialist terms and notions used, and defines "evaluation of appropriateness" as any activity (collection of samples, trials and inspections, evaluations, verifications, certifications, registrations and standardising) aimed at confirming, directly or indirectly, the fact that the applicable requirements are being observed.

Article 4 determines the basic principles of the evaluation of appropriateness, and Article 6 provides that the system of accreditation bodies includes the Council for Accreditation, the organisation for accreditation, the Commission of Appeals and specialised technical commissions.

The Law establishes the foundations whereby an accreditation may be refused, suspended or withdrawn.

One of the most important provisions of the law refers to the obligatory labelling of all produces liable for the certification of appropriateness with the relevant national brand, or with other approved brands. The obligation of labelling rests with the supplier who releases the produce on the market.

The law also establishes that the maximum tariffs for services provided within the system of accreditation will be established by the Government, and the payments will be made by the beneficiary of accredited services (the supplier).

The law recently voted by the Parliament will substitute the Law on Certification.

III. Law on the Prohibition of Industrial Fishing

ADEPT comment: The adopted Law provides for the derogation from the Law on Animal Regnum and bans industrial fishing in rivers Nistru and Prut, as well as in the accumulation lakes Dubasari and Costesti-Stinca for a three-year term.

The law was adopted despite the counter-arguments of the Commission for Environment and the Negative Opinion of the Government, which argued that where trans-border agreements and economic grounds are missing and where licences for industrial fishing have already been issued the introduction of prohibitions is groundless and might cause authorities certain problems, such as conflicts with licence holders.

Apart from this, the fishing council has ruled that the temporary prohibition of industrial fishing is not an efficient solution for the recovery and preservation of aquatic resources.

This legislative initiative was made by the communist deputy Iurii Cicinov, who used to be Chairman of the Association of Hunters and Fishermen and still has influence within this organisation and whose interests he promotes in the Parliament, Government and other state institutions (we only need remind of the laws on trade in weapons and munitions in the Association's shops).

IV. Law on the Amendment of State Budget for 2003

ADEPT comment: Through this law, the Parliament exempted from value added tax the following:

- the imported materials for the manufacturing of glass melting ovens;
- 12 church bells imported for ensuring the holding of the first international contest of church bell ringers.

We need to remind that, in the first decade of June, on the occasion of 190th anniversary of the Chisinau and the Entire Moldova Metropolitan Church, a contest will be held, on which occasion a special bell tower will be built on the territory of the tourist resort "The Moldovan Village" in Criuleni. This initiative was supported by the President of Moldova, and the special bells will be imported from Belarus.

V. A number of laws on the judicial reform and the upgrading of the system of judicial bodies were adopted by Parliament in the first reading.

ADEPT comment: These laws are the follow-up of the changes made to the Constitution of the Republic of Moldova at the end of 2002, whereby the tribunals and the courts of appeal will be re-organised within a six-month term. The laws propose that the tribunals from the towns Chisinau, Balti, Bender, Cahul and Comrat be re-organised into courts of appeal, and the economic court of Moldova be re-organised into the Economic Court of Appeal. At the same time, the current Court of Appeal is to be abolished.

The drafts provide that judges serving in the re-organised courts are to be re-appointed to their positions through a decree of the President of Moldova, upon the proposal of the Superior Council of Magistrates. The judges of the Court of Appeals, which is to be abolished, will be proposed, pending on their consent, for transfer to vacant posts at courts of appeal and other courts or promoted to the Supreme Court of Justice.

It was these very provisions that have caused a negative reaction on behalf of the opposition, which took the proposed provisions as just another attempt by the current government to cleanse personnel in the judiciary system.

The law also includes a number of provisions on the methods of reorganisation of courts, of passing over assets and files, and of hiring personnel. Also, provisions have been included with regard to the competence and the method of trying civil cases during the transition period.

Apart from the legislative acts mentioned above, Parliament adopted in the first reading a series of changes and additions to the legislative acts regulating the activity of courts. These drafts have been proposed simultaneously by the Government and a group of deputies. There are essential differences between the two drafts, which are worth considering in more detail.

In the draft submitted by the deputies it is proposed that the organisational, material and financial support of courts be provided by the Superior Council of Magistrates. Thus, the prerogatives that are currently held by the

Government and the Ministry of Justice could be essentially cut back, which fact would enhance the conditions for ensuring the independence of judges, whose material and financial support will not be used to influence them anymore. On the other hand, the Superior Council of Magistrates does not have the necessary structures to immediately put into practice the mentioned above prerogatives, and the lack of co-ordination, under the circumstances of a new judicial reform, but also of a new territorial administrative reform, would create chaos and endanger the very exercise of justice.

It is to be reminded that earlier, in 1999-2000, the issue of judicial self-administration was raised, but the then Parliament rejected the draft law on setting up a department for judicial administration under the Superior Council of Magistrates. At present, if the functions of self-administration are transferred to the Superior Council of Magistrates, it will be necessary to solve the problem of setting up a managing body, although the authors of the said draft law have not made any express proposals in this sense.

The draft laws mentioned here are to be adopted in the second reading in the near future, and then one will be able to see which opinion was more convincing: the one of the deputies or the one of the government.